[redacted]

DOCKET FILE COPY ORIGINAL

NYNEX
1111 Westchester Avenue, White Plains, NY 10604
Tel 914 644 6993
Fax 914 644 6247

Donald C. Rowe
Counsel

EX PARTE OR LATE FILED

NYNEX

March 26, 1996

RECEIVED
MAR 26 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Dear Mr. Caton:

Re: CC Docket No. 94-54, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers;
CC Docket No. 95-185, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers

It is my understanding that the copies of NYNEX Reply Comments filed and served yesterday, March 25, in these proceedings did not include the Summary referred to in the Table of Contents. Please accept the original and six complete copies provided herewith in substitution for those copies. I am also serving copies of the Summary, along with this letter, on all parties of record.

An additional copy of this letter is provided for you to stamp and return to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

DCRowe

DCR/sab
Attachment

cc: All Record Parties

RECEIVED

MAR 26 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Interconnection Between Local Exchange	)	CC Docket No. 95-185
Carriers and Commercial Radio	)	
Service Providers	)	
	)	
Equal Access and Interconnection Obligations	)	CC Docket No. 94-54
Pertaining to Commercial Mobile	)	
Radio Service Providers	)	

NYNEX REPLY COMMENTS

New England Telephone
& Telegraph Company

New York Telephone Company

Saul Fisher
Donald C. Rowe

1111 Westchester Avenue
White Plains, New York 10604

Its Attorneys

Dated: March 25, 1996

TABLE OF CONTENTS

SUMMARY OF NYNEX REPLY COMMENTS

No proceeding in recent memory has brought out such vigorous commentary of so many parties dividing into two diametrically-opposed positions, i.e., whether or not LEC-CMRS "bill-and-keep" interconnection arrangements should be, and can lawfully be mandated. This is caused by the single fact that Commission's adoption of "bill-and-keep" would cause a shift of roughly $1 billion annually from local exchange carriers to wireless carriers without a single penny of offsetting cost or operational change.

This proceeding is no longer about the changes that are required in LEC-CMRS interconnection agreements or charges. Since the development of the NPRM Congress has specified these changes in the Telecommunications Act of 1996. That is, new interconnection agreements are to be timely negotiated between the carriers under principles established by this Commission pursuant to Section 251, agreed upon under the supervision of State regulatory commissions (with State arbitration if necessary) pursuant to Section 252(a)-(d), and then approved by the State commissions (with the federal judiciary empowered to ensure adherence to national telecommunications policy) pursuant to Section 252 (e).

Instead, the proceeding now focuses almost exclusively on the propriety of immediately shifting the burden of LEC call-terminating costs from CMRS customers to LEC customers. State regulatory commenters unanimously observe that this shift would put a strain on their efforts to ensure low-cost, universal service.

Further, because exemption from access cost-sharing would be established here apart from any comprehensive review of LEC access charges generally, IXCs will inevitably reroute portions of their traffic through CMRS providers to take advantage of the substantial rate arbitrage that would be established. For NYNEX alone, every 1% of IXC traffic thus rerouted will reduce current access charges (and support for local service) by over $10 million. In addition, this arbitrage will occur far more readily for those IXCs with current wireless affiliates or alliances. Thus, this rate arbitrage will not only exacerbate the cost burden on wireline customers, but it will also create significant competitive advantages for some IXCs at the expense of their interexchange and wireless rivals.

The Commission itself has properly shown concern for these results. Indeed, the effect of its own Part 36 Rules will shift cost responsibility to it through separations for a portion of LEC costs which are now considered intrastate. As "exogenous costs", the Commission will have to provide interstate rate increases for their recovery, deepening the Commission's own challenges of legislatively-extended universal service and access charge restructuring. Further, because the costs shifts under Part 36 do not equal the full intrastate revenues lost, the State commissions also would be forced to deal with rate recovery from local services.

None of these adverse results are necessary. As above, the new 1996 Act provides both the procedures and the processes for creating new LEC-CMRS agreements. The purpose of this NPRM has been vitiated. Further, this Commission has more important tasks. First, it must quickly establish the principles for interconnection under Section 251 in its Interconnection proceeding. Second, it must resolve many critical universal service issues under Section 254 in its already commenced Universal Service proceeding. Third, it must promptly undertake a comprehensive review of its overall access policies in an Access Charge Reform proceeding. The Commission should take each of these actions and, in so doing, adopt its first model approach to federal leadership, i.e., to establish "a federal interconnection policy framework...with respect to interstate services" and that framework should "serve as a model for State commissions considering these issues with respect to intrastate services" (NPRM ¶ 108). As discussed herein, this approach is in complete accord with sound legal analysis and national telecommunications policy.

95-185a.doc

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Interconnection Between Local Exchange	)	CC Docket No. 95-185
Carriers and Commercial Radio	)	
Service Providers	)	
	)	
Equal Access and Interconnection Obligations	)	CC Docket No. 94-54
Pertaining to Commercial Mobile	)	
Radio Service Providers	)	

NYNEX REPLY COMMENTS

The NYNEX Telephone Companies ("NYNEX") hereby submit their Reply Comments responding to the comments of other parties filed March 4, 1996, in this proceeding.[1] NYNEX showed in its Comments that the enactment by Congress of the Telecommunications Act of 1996 ("1996 Act"), subsequent to the issuance of the NPRM, has vitiated any need for this proceeding (NYNEX 3-10). NYNEX also showed that continued cellular growth and extraordinary investment in PCS spectrum demonstrates that there is no need for the Commission to promote wireless services herein at the expense of wireline carriers and their customers (NYNEX 11-19). Further, from an

1 The NYNEX Telephone Companies are the New England Telephone and Telegraph C· ("NET") and the New York Telephone Company ("NYT").

economic perspective, the adoption of federally-mandated "bill-and-keep" arrangements would have adverse rather than positive consequences (NYNEX 20-34, Affidavit of Dr. Taylor). In any event, State commissions are properly seeking to balance multiple public interest objectives in their establishment and oversight of intrastate LEC-CMRS interconnection charges, and they may not be lawfully preempted from such efforts (NYNEX 35-43).[2]

Overall, NYNEX urged the Commission to adopt the first of the three "leadership" approaches it offered in the NPRM. That is, the Commission should adopt "a federal interconnection policy framework that would directly govern LEC-CMRS two-carrier interconnection with respect to interstate services" and which framework would "serve as a model for State commissions considering these issues with respect to intrastate services" (NPRM ¶ 108). Wireless industry parties have largely supported either the second or third approach offered in the NPRM, each involving some degree of federal preemption of State regulatory authority over intrastate communications in favor of federally-mandated "bill-and-keep" arrangements (NPRM ¶¶ 109-110).

While there is an obvious benefit to be gained by wireless carriers and their customers in driving LEC terminating charges to zero, they have not shown: (a) that either wireless carrier success or investment is dependent upon such preferential

[2] In addition, in order to answer the Commission's inquiries concerning the proper application of interstate access charges, NYNEX pointed out that current Commission precedent permits LECs to charge CMRS and IXCs certain access charge elements, while strongly urging the Commission to initiate a comprehensive Access Charge Reform proceeding (NYNEX 44-46).

treatment; (b) that "bill-and-keep" would not have adverse economic consequences; or (c) that the Commission has the lawful authority to preempt State regulatory commissions in this manner. Each of these points is discussed below in the order and format specified in the NPRM.

I. GENERAL COMMENTS

A. There Has Been No Economic Need Shown For The Adoption Of Bill-And-Keep

The NPRM has its genesis in the Commission's concern that "existing general interconnection policies may not do enough to encourage the development of CMRS, especially in competition with LEC-provided wireline service" (NPRM ¶ 2). The NPRM does not offer any specific evidence that would demonstrate either the failure of its current policies or the need for new policies. Instead, it requests such evidence from those that urge it to mandate "bill-and-keep" (NPRM ¶ 113).

It is significant that, apart from anecdotal commentary, the wireless carriers have provided no substantial evidence that they have been in any way impeded in their market entry or growth by State commission or LEC action.[3] On the contrary, all of the evidence presented shows the meteoric growth of wireless services and the extraordinary attraction of new capital (nearly $15 billion dollars for PCS spectrum licenses to date)

[3] See, e.g., Western Radio Services 2 and APC 4-6. Importantly, these commenters never discuss their failure to bring these "problems" to the Commission's attention via the Section 208 complaint as specified by Commission policy. In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd. 1411, 1498 (1994).

(NYNEX 11-13). The Commission itself has remarked that wireless growth has been "amazing." There is simply no evidentiary basis that would support in policy or law the complete reversal of past Commission practice contemplated in the NPRM (NYNEX 15-19).

B. The 1996 Act Provides The Answers To The Concerns Expressed In The NPRM

Commenters seeking federally-mandated intrastate "bill-and-keep" arrangements point to OBRA Section 332 for authority. We address the infirmity in that legal argument below. Perhaps more importantly, these commenters do not take into account -- as requested in the Supplemental NPRM -- the extent to which the provisions of the 1996 Act satisfy the concerns expressed in the NPRM. In fact, the provisions of Sections 251 and 252 of the 1996 Act respond almost point-by-point to these concerns in full satisfaction of the NPRM, as follows:

(1) nationally-applicable principles for interconnection must be established by this Commission;

(2) potential LEC "market power" will be controlled by State approval process and, if necessary, arbitration;

(3) a short timeframe for action is compelled;

(4) rate discrimination is precluded;

(5) reciprocal compensation is required;

(6) agreements are made public; and

(7) carrier and State adherence to the law is enforceable by the federal courts.

The Commission's concerns have been answered by Congress with specific direction to the carriers, the Commission, State regulators and the judiciary as to their respective roles and responsibilities. There is no room in this legislative scheme for the Commission to mandate LEC intrastate interconnection rates as proposed in the NPRM.

C. The 1996 Act Does Not Require That The NPRM Extend Into Interexchange Access

CompTel seeks to use the enactment of the 1996 Act to broaden the NPRM to include interexchange access. The central premise of CompTel's analysis is that the 1996 Act provides "no basis for distinguishing between carrier-to-carrier pricing in the ILEC-CMRS interconnection context *versus* pricing in the context of other telecommunications carriers making use of the ILECs' networks to provide their telecommunications services"(CompTel 2). This is simply incorrect. Nothing in Section 251 of the 1996 Act requires the procrustean, one-size-fits-all model supported by CompTel; indeed, that Section expressly supports distinctions among classes of carriers (or, more precisely, among classes of services offered by carriers).

For example, Section 251 clearly distinguishes between interconnection with local exchange carriers and interexchange carriers. Section 251(c)(2) explicitly limits the incumbent LEC's duty to provide interconnection with its network to interconnection for the purpose of transmitting and routing telephone exchange service and exchange access service.[4] Section 251(g) expressly preserves preexisting restrictions and obligations, "including receipt of compensation," applicable to access services provided to interexchange carriers and information providers. Indeed, the legislative history of Section 251 clearly manifests an intention that the obligations created therein would apply to the competitive provision of local exchange services, not toll services.[5]

In short, there is no statutory basis to broaden this NPRM to include LEC interconnection with interexchange services or carriers. The Access Charge Reform proceeding will address these issues.

4 CompTel argues that Section 252(c)(2) "makes clear that exchange access, i.e., access for providers of toll telephone service, is a form of interconnection with the ILEC's network." To the contrary, the reference to exchange access in that section is intended to limit the interconnection obligation to situations where the interconnecting carrier is *providing* exchange access (or exchange) service, and not to situations where the carrier is *using* such service to provision its own end-user toll service.

5 For example, the report on the House version of the legislation (HR.1555) identified as one of the bill's "three main components," the promotion of "competition in the market for local telephone service by requiring local telephone companies (or 'local exchange carriers') to offer competitors access to parts of their network." The intent of the Senate in its version of the legislation (S.652) is even clearer. That is, the Senate Report specifically notes (at p. 19) that"[t]he obligations and procedures prescribed in this section [i.e., § 251] do not apply to interconnection arrangements between local exchange carriers and telecommunications carriers under Section 201 of the 1934 Act for the purpose of providing interexchange service, and nothing in this section is intended to affect the FCC's access charge rules." This point is repeated at page 22 of the Report: "The Committee also does not intend that Section 251 should affect regulations implemented under Section 201 with respect to interconnection between interexchange carriers and local exchange carriers."

Nothing in the Conference Report suggests any intention to back off from this clear intention of both the House and Senate bills, and indeed, the language of the final 1996 Act confirms the continued intention of Congress to limit the § 251 (c)(2) interconnection obligation to local service interconnection.

II. COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECS AND CMRS PROVIDERS' NETWORKS

A. Compensation Arrangements

1. LEC-CMRS Bill-And-Keep Would Be An Uneconomic System

Not surprisingly, there are many commenters who argue in favor of the Commission's proposed mandate of "bill-and-keep" arrangements between LECs and CMRS providers. Yet none of these establish a sound economic basis for such arrangements. To begin, all proponents accept the fundamental proposition set forth in the NPRM that bill-and-keep arrangements can only be an economically supportable alternative if: (a) the respective carriers' traffic is directionally balanced (i.e., each carrier terminates about the same amount of the other carriers' originating traffic); or (b) the costs of terminating such traffic is negligible and, therefore, traffic imbalances can economically be ignored. Both conditions essentially substitute presumed gains from administrative simplicity and the conservation of carrier billing resources, for the loss of economic pricing, assuming that net cost imbalances are minimal. In any other circumstances "bill-and-keep" will favor one carrier's system and its customers over another.[6] There is no basis for the Commission to conclude herein that either traffic is balanced or that costs are negligible.

(a) Traffic Imbalance. No party disputes that CMRS-LEC traffic is severely imbalanced toward CMRS-originating rather than LEC-originating calls. For example, the record shows without dispute that this imbalance is 6:1 for NYNEX and 11:1 for Pacific Telesis. No evidence has been presented that imbalances in these ranges are atypical.[7]

Some commenters speculate that this result may be different for PCS. They point to the experience of APC which claims "traffic balance."[8] Yet underlying this claim, APC acknowledges a 30% PCS originating-traffic predominance despite service terms and conditions which favor PCS terminating-traffic, i.e., APC's completion of all inbound calls to voice-mail and its promotion of first-minute free (enabling PCS customer inbound call screening). If a 30 percent differential results from even these extremely favorable conditions for incenting inbound traffic, there is certainly no basis to conclude that current traffic imbalances for CMRS customers will not be similar for PCS

---

6 The effect of such favoritism is particularly pernicious where, as here, the classification of winners and losers is based on the technology employed, so that a technology preference is established which distorts consumer choice of competing systems. See, also Comments of NARUC.

7 On the contrary, the Commission itself observes that the total service circumstances of wireless calling (e.g., airtime charges, battery life, out-of-area unavailability) are not conducive to traffic balance now or for the foreseeable future (NPRM ¶ 14).

8 APC at 9-10.

customers. And, in any event, cellular traffic volumes are certain to predominate over PCS volumes for the foreseeable "interim" period.[9]

(b) LEC Costs. Commenters provide no new data to support the notion that LEC costs are negligible. Instead, they merely reference Dr. Brock's off-peak cost estimate of zero set forth in the NPRM. At the same time, they largely ignore his concession that LEC costs for peak period traffic (2.1¢) are substantial while inconsistently arguing that "bill-and-keep" should apply to both peak and off-peak traffic for reasons of administrative simplicity.[10] The only wireless traffic data presented shows in fact that CMRS traffic is massed in the very same peak traffic timeframe (8am to 6pm) that LEC systems experience.[11] Clearly, such average data may disguise day-of-week, geographic or even Company-to-Company opportunities for negotiating effective off-peak discounted pricing. But it does not demonstrate that CMRS traffic does not impact LEC networks. On the contrary, LEC offices with substantial business traffic experience

[9] Indeed, these imbalances will almost certainly apply throughout the entire developmental periods which, as some parties urge, may extend through the next five years (SPRINT Spectrum at 28).

[10] In fact, the ratesetting challenge is only in part the level of LEC costs. For example, NYNEX has shown in detail that its direct costs of providing switched interstate access service averages approximately 1¢. In the Matter of The NYNEX Telephone Companies Petition for Waiver, Transition Plan to Preserve Universal Service in a Competitive Environment, Memorandum Opinion and Order, 10 FCC Rcd. 7445 (1995). Nevertheless, the cost responsibility assigned for recovery the separations process is far higher to protect the subsidy to local exchange service rates. The Commission itself has recognized that the resulting access charges are uneconomic and must be changed (Id. at 7455-56). However, at this time, additional minutes added to the interstate jurisdiction add 2.36¢ to the federal cost responsibility for NYNEX (see, subsection II A. (4), following). Accordingly, the Commission cannot begin its progress towards restructuring access charges by exempting "classes" of carriers without significant adverse consequences on local exchange service rates.

[11] Charles River Associates at 15, attached to Comments of CTIA.

virtual peak load conditions almost throughout the business day. Thus, it is only through mutual agreement that both carriers can ensure that "off-peak" discounts to any carrier will make economic sense.[12]

Accordingly, if LEC costs are not negligible, they can only be ignored if they are balanced against comparable CMRS costs in a "barter" form of "bill-and-keep." This would require here that NYNEX's costs be only 16 percent of CMRS costs per call to create cost equality despite its 6:1 call termination ratio. There is no record to support this remarkable proposition.[13] Indeed, assuming arguendo that there were merit to this proposition, "bill-and-keep" would still be an uneconomic LEC-CMRS interconnection scheme because it would incent carriers and customers to regard these vastly disparate costs as equal.[14]

2. **Bill-And-Keep May Not Be Mandated Herein**

Congress specifically avoided the uneconomic bill-and-keep pitfall in the 1996 Act by providing for mutual recovery of call terminating costs. Although much has been made

---

[12] In this regard, NYNEX commends to the Commission's favorable attention the brief comments of one small LEC which succinctly discusses why mutually negotiated interconnection charges are the preferable alternative (Smithville Telephone Company 3-5).

[13] For example, AT&T has claimed that traffic imbalances are possibly offset by cost imbalances and, in these circumstances, "bill-and-keep is a reasonable proxy on an interim basis for TSLRIC." Ex parte communication of AT&T, dated March 5, 1996. AT&T's operation of extensive wireless services and its nationwide interconnection to LECs enables it to prove this point with specific evidence. It does not do so, leaving the Commission with unsubstantiated assertions rather than evidence of its claim. The Commission and the Courts require a greater factual record.

[14] Taylor Affidavit 7-12, attached to NYNEX Comments.

by the commenters of the right of CMRS providers' to cost recovery, Section 252(d)(2) of the 1996 Act specifies that the same right of cost recovery applies to the LECs:

> "CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC -
>
> (A) IN GENERAL - For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless -
> (i) such terms and conditions provide for the mutual and reciprocal recovery by <u>each carrier</u> of costs associated with the transport and termination on <u>each carrier's network facilities</u> of calls that originate on the network facilities of the other carrier." (emphasis added)

The Commission may not violate these rights. Indeed, the law only provides for bill-and-keep by "waiver"[15] of the contracting parties because Congress also recognized in Section 252(d)(2) that mandated bill-and-keep arrangements otherwise deny one of the interconnecting carriers its right of mutual recovery:

> "(B) RULES OF CONSTRUCTION - This paragraph shall not be construed- -
> (i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)."

USTA has estimated overall direct LEC costs at nearly $440 million annually, without consideration of further CMRS growth. The Commission may not mandate the LECs' surrender of their statutory rights to the recovery of these costs.

---

15 Significantly "waiver" is defined in Black's Law Dictionary to mean

> "[t]he intentional or voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right ..." (Rev. 4th Ed).

3. State Regulators Oppose Federally Mandated Bill-And-Keep

Commenters make much of the fact that some State regulatory commissions have adopted intrastate "bill-and-keep" arrangements. However, the record also shows that others have rejected it, and that some of those "adopting it" have done so conditionally or reluctantly.[16] The Commission should not be left with the impression of State support for "bill-and-keep." The Commission has now been clearly and specifically informed that NARUC, which represents all of the State regulatory agencies, has approved a Resolution expressing the State consensus opposing "bill-and-keep." In part, that Resolution reads as follows:

> "The FCC's proposal to establish preferential interconnection policies applying only to CMRS interconnection arrangements is counter to the policies in this [1996] Act prohibiting discriminatory interconnection arrangements";
>
> "The FCC's proposal to establish preferential interconnection policies applying only to CMRS interconnection arrangements could give CMRS providers a competitive advantage relative to new wireline local exchange competitors, which could impair the development of economically efficient telecommunications competition";
>
> "Based upon particular local circumstances States should be allowed to determine the best method of mutual compensation for interconnection and transport"; and
>
> "NARUC urges the FCC to develop policies regarding CMRS interconnection arrangements that would not cause interconnecting wireline local exchange carriers to incur uncompensated costs."[17]

---

16 Taylor Affidavit 22-25, attached to NYNEX Comments.

17 "Resolution Advocating Federal/State Partnership on CMRS Interconnection and Opposing Federal Preemption," attached as Appendix A, Initial Comments of The National Association of Regulatory Utility Commissioners.

Notwithstanding earlier arguments, the referenced Resolution cannot be construed in any other way than as clear State regulatory opposition to the proposed establishment of federally-mandated LEC-CMRS "bill-and-keep" arrangements herein.

The "national" opposition of NARUC to bill-and-keep arrangements is remarkably complimented by the "local" perspective provided by the NYS Department of Public Service ("NY DPS"). NY DPS points out that it has been addressing local competition issues for several years. In doing so, it has sought to "create a level playing field that maximizes the potential development of local exchange competition, while preserving and protecting universal service."[18]

Like NARUC, NY DPS points first to the fact that "bill-and-keep" between CMRS and LECs is "not technologically neutral." Thus, "[t]he result is to benefit CMRS at the expense of other potential LECs based on the technology employed to originate and terminate calls, since only CMRS providers would be exempt from paying LECs for terminating traffic."[19] Then, like NARUC, NY DPS focuses on the fact that federally mandated bill-and-keep arrangements would deprive incumbent LECs of compensation for performing transport and switching functions that benefit CMRS providers:

> "Given the current imbalance in terminating traffic between cellular carriers and LECs, mandating bill-and-keep could lead to LECs not being compensated for a significant portion of their terminating access costs. A LEC then might seek recovery of these lost revenues from other services, such as basic telephone service. Such a result would be contrary to universal service objectives."[20]

18 NY DPS 4.

19 Id. 4-5.

20 NY DPS 8.

Both NARUC and NY DPS have properly identified the practical need for LECs to recover their costs of terminating CMRS calls. Both also properly fear that the NPRM will have an adverse effect on local service costs and universal service, when it observes that the carriers should recover the costs from their own subscribers (NPRM ¶ 60).[21] As discussed below, this cost-burden will also be substantially exacerbated by the IXC rate arbitrage that will occur in response to the uneconomic "cost saving" opportunity presented by "zero rate" LEC terminating access.

4. Mandated Bill-And-Keep, Aggravated By IXC Rate Arbitrage, Would Require That The Commission Provide For Federal Cost Recovery

It is significant that only the State regulatory parties and the LECs addressed the adverse economic effect that federally mandated "bill-and-keep" arrangements would have on local exchange service customers. While repeatedly advancing the argument that "bill-and-keep" furthers the interests of consumers in developing wireless services, the wireless carrier commenters fail entirely to acknowledge that they are asking wireline customers to support wireless customers. As USTA points out, the transfer of benefits is effected through an approximately $800 million - $ 1.1 billion reduction in nationwide LEC revenues without any changes in LEC operating costs whatsoever.[22] As both

---

[21] Indeed, one small LEC has indicated that local service costs could rise by $1.10 per month (Home Telephone 1).

[22] "Bill-and-Keep: A Bad Solution to a Non-Problem," at 1; attached to USTA Comments. The record shows that NYNEX will bear nearly $50 million in revenue losses (NYNEX 27).

NARUC and NY DPS state -- without further Commission action -- it is the intrastate wireline customer who is left to compensate for this loss.

In fact, the negative impact on wireline carriers and their customers will be far greater than estimated by NARUC, as IXCs will inevitably seek to leverage the resulting arbitrage opportunity. That is, the IXCs will route calls through CMRS providers to take advantage of the "zero rate" for LEC terminating service, rather than continue to pay the access charges in place today. The potential negative impact of such rate arbitrage on LECs and their customers is significant. In the NYNEX States, for every 1% of IXC traffic rerouted to terminate to LECs via CMRS providers under "bill-and-keep," the NYNEX Companies will lose over $10 million in revenue support for other services, such as residential local exchange service. Further, the routing of interexchange service traffic via CMRS providers to LECs will certainly add uneconomic costs to CMRS systems and increase LEC peak-period costs (both expense and capital).

Even beyond these clearly undesirable consequences, those IXCs with existing wireless carrier affiliates will use this new arbitrage opportunity for substantial competitive advantage over both IXC and wireless rivals. NYNEX believes that these competitive concerns have motivated even SPRINT in its comments to caution against the application of "bill-and-keep" for interexchange traffic.[23] SPRINT's concerns echo those of the Commission itself: "we note that substantially different prices for similar forms of

[23] SPRINT 13-14.

interconnection raise the possibility that parties could seek to deflect traffic from a more costly form of interconnection to a less costly form" (NPRM ¶ 77). Indeed, so concerned was the Commission that it sought comments on "methods to prevent such traffic deflection" (Id.). Regrettably, this concern is very well-taken, given that neither the State commissions nor the LECs will be able effectively to stop this arbitrage.

The overall result is that the Commission itself must provide for LEC cost recovery and discourage arbitrage. Moreover, this responsibility is specified in the Commission's own Rules. For example, if the Commission "federalizes" all CMRS-LEC interconnecting services as CMRS parties urge, it will change the jurisdiction in NYNEX of over 1.2 billion annual Minutes-Of-Use ("MOUs") from State to federal jurisdictional responsibility -- more than 2.5% of NYNEX's total MOUs. This in turn will transfer almost $29 million of costs (2.36¢/MOU) from the States to the Commission under Part 36.[24] The Commission must provide for this "exogenous" cost change by increasing interstate access rates.[25] In either case the adoption of "bill-and-keep" here will have deepened the public interest challenges presented by extended universal service concerns and access charge restructuring. Moreover, as CMRS MOUs continue to grow at a far faster rate than interstate MOUs, this new federal cost responsibility will grow disproportionally (even without the added cost burden of IXC rate arbitrage).

---

[24] It is noteworthy that even this transfer will leave a $20 million burden of eliminated revenue support for NYNEX's State regulators to accommodate in local service rates, as correctly predicted by NY DPS.

[25] In the Matter of Price Cap Performance Review For Local Exchange Carriers, First Report and Order, CC Docket 94-1 at ¶¶ 274, 293 (released April 7, 1995).

The wireless carrier parties who urge the "federalization" of all CMRS calls simply avoid discussing these consequences. Yet these adverse impacts provide powerful bases for rejecting "bill-and-keep", even as an interim arrangement. However, if the Commission is nevertheless wrongly persuaded to act now to impose specific LEC-CMRS interconnection rates, it could substantially limit both the cost recovery shortfall and the opportunity for IXC arbitrage by establishing LEC interconnection charges at the level of the LEC's access charges, less the Carrier Common Line ("CCL") element.[26] Later, it might also determine in the Interconnection proceeding that CMRS-LEC interconnection charges "for the transmission and routing of telephone exchange service and exchange access"[27] shall not exceed LEC interstate access charges in the agreements to be made under Section 252 of the 1996 Act. However, it is manifestly clear that exempting CMRS providers from paying LEC costs of terminating access by mandating "bill-and-keep" arrangements would be contrary to the public interest.

5. Bill-And-Keep Should Not Be Extended To Other LEC Facilities

Some commenters argue that the NPRM has not gone far enough. They would extend mandatory "bill-and-keep" also to LEC tandem switching and common transport.

---

[26] Interestingly, the nominal cost-per-minute transferred to federal jurisdiction under Part 36 (2.36¢) approximates both the NYNEX interstate access charges, less the CCL element (2.96¢) and the reciprocal charges recently established under the jurisdiction of the NY DPS (2.59¢). Accordingly, if the Commission were wrongly led herein to "federalize" all CMRS-LEC calls (MOUs), it could do so for an interim period at existing federal access charge levels (NPRM ¶ 68) without creating the extraordinary new arbitrage opportunity presented by mandating "bill-and-keep" at this time. Thereafter, it could properly pursue the rationalization of all access charges in the Access Charge Reform proceeding.

[27] Section 251(c)(2)(A) of the 1996 Act.

Obviously, extending "bill-and-keep" beyond the proposal in the NPRM compounds its uneconomic consequences. As the Commission has properly pointed out, LEC tariffs already contain traffic sensitive rates for such facilities when provided to IXCs, and "cost-causation principles suggest traffic sensitive cost recovery" (NPRM ¶ 63). Contrary to commenters' claims, payment by CMRS providers -- like others -- for these facilities is not contrary to administrative simplicity because the LECs (not the CMRS providers) measure and bill the usage. Administrative simplicity does not warrant free service here, or with respect to any other LEC facility.

B. Implementation Of Compensation Arrangements

In the NPRM, the Commission has indicated that it is considering adopting one of three leadership models in this proceeding (NPRM ¶¶ 108-110). As above, NYNEX supports adoption of the first model, i.e., that the Commission "adopt a federal interconnection policy framework . . . with respect to interstate services" and that framework should "serve as a model for State commissions considering these issues with respect to intrastate services" (NPRM ¶ 108). NYNEX has further pointed out that such federal leadership should be asserted in three imminent proceedings: the Interconnection proceeding (pursuant to Section 251 of the 1996 Act), the Universal Service proceeding (pursuant to Section 254 of the 1996 Act), and the Access Charge Reform proceeding (fundamental to the procompetitive environment directed by Congress and long-favored by the Commission).